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Paper No. 10

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**OFFICE OF PETITIONS**

In re Application of  
Burggraf, Allen :  
Application No. 10/083,180 :  
Filed: February 25, 2002 :  
Attorney Docket No. PA101-02 :  
ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 11, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to submit formal drawings in a timely manner in reply to the Notice of Allowability mailed May 26, 2004, which set a non-extendable period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 27, 2004. A Notice of Abandonment was mailed on October 13, 2004.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.<sup>2</sup>

<sup>1</sup> In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

<sup>2</sup> See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1). The response submitted by the petitioner with the instant petition was improper in view of the fact that prosecution for the above-identified application has been closed. Therefore, any amendments must be accompanied by a request for continued examination (RCE) in compliance with 37 CFR 1.114 (including the fee set forth in 37 CFR 1.17(e)) to re-open prosecution.

Further correspondence with respect to this matter should be addressed as follows:

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By fax:                    (571) 273-8300  
                                  ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

*Liana Chase*  
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Petitions Examiner  
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Office of the Deputy Commissioner  
for Patent Examination Policy